


## **MEMORANDUM**

**TO:** Honorable Chairman and Members of the Board of Zoning Appeals

**FROM:** John Rogerson, Senior Zoning Officer 

**DATE:** February 7, 2013

**SUBJECT:** **ZA-0003-2012 3492 Frederick Drive**

---

### **FACTS:**

Mr. Luis Maldonado has applied for a variance to Section 24-258(b), Yard requirements, of the Code of James City County to reduce the required rear yard setback from 35 feet to approximately 20' 6". This proposed variance request is to allow the continued placement of a deck that encroaches approximately 14' 6" into the rear yard setback. This property is currently zoned R-2, General Residential and can further be identified as JCC RE Tax Map No. 1220600054.

### **FINDINGS:**

Mr. Luis Maldonado constructed a deck on the rear of his residence that encroached approximately 14' 6" into the required 35' rear yard setback. It is my understanding that Mr. Maldonado started the construction of the deck and was then told he needed a building permit. On March 13, 2012 Mr. Maldonado came down to the County Offices and applied for a building permit for his deck. As part of the approval process Mr. Maldonado came to get approval from Zoning. I reviewed the application for the deck and noticed that the rear of the house was right on the required 35' rear yard setback. As a result of that, I advised Mr. Maldonado that he did not have room on the rear of the house for a deck and still meet the required 35' rear yard setback requirement. It is my understanding that the applicant had signed a contract with a builder for the construction of the deck and since he was half the way through the construction he decided to complete it prior to receiving all necessary building permit approvals.

The property is a flag lot and the rear of the house backs up to common area that is in a Conservation Easement. The property behind his home can never be built on because of the Easement. The lot is unusually wide but very shallow so that the front of his house is right on the front setback line and the rear of the house is right at the rear setback line. Mr. Maldonado tried to do a boundary line adjustment to make his lot deeper to accommodate the deck he built. However, the homeowner's Association would not approve the proposed boundary line adjustment.

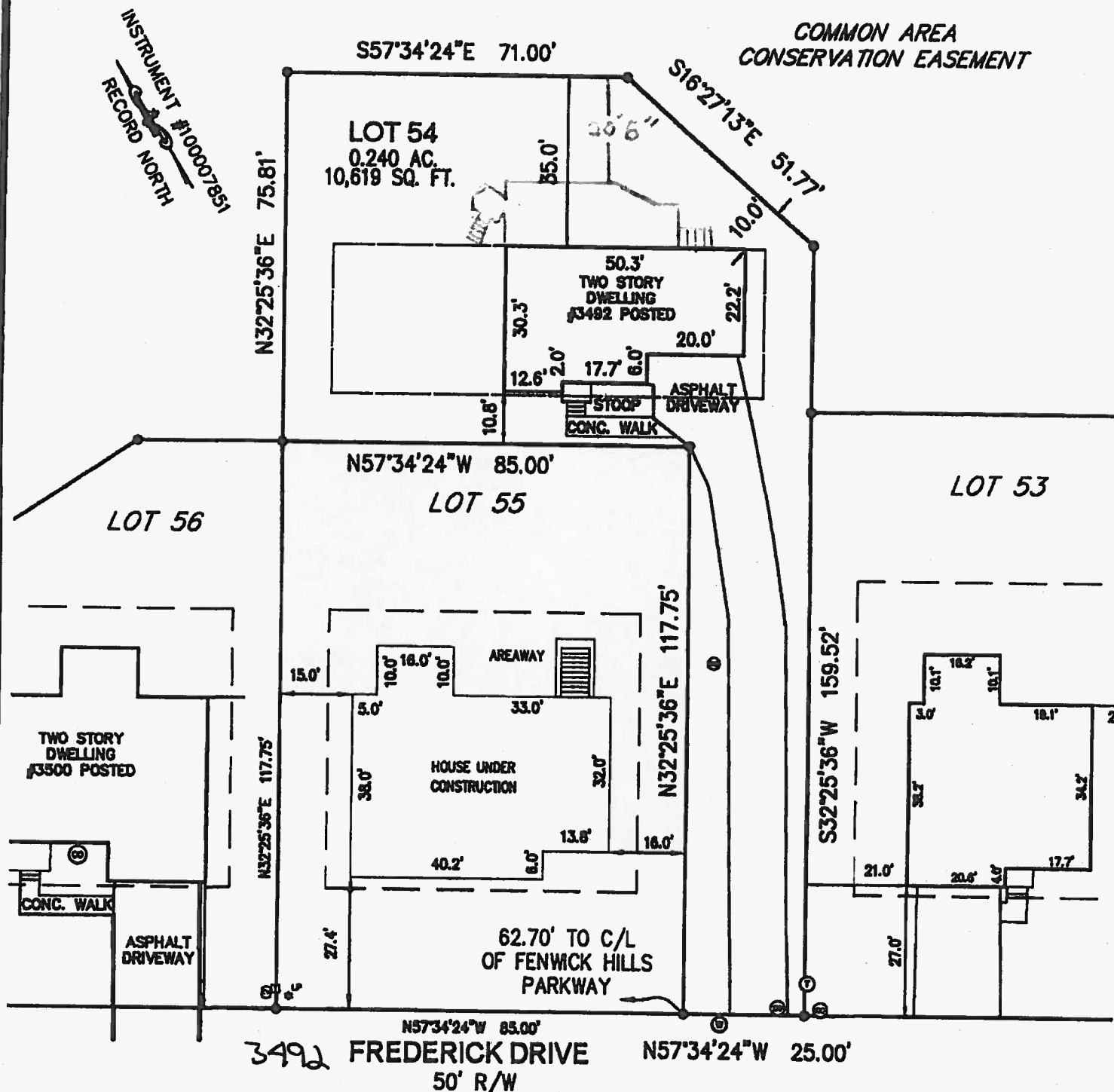
### **RECOMMENDATION:**

An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. The strict application of the terms of the Zoning Ordinance does not produce an undue hardship nor does it effectively prohibit or unreasonable restrict the use of the property in this case. This hardship is entirely self-inflicted. Staff recommends denial of this application.

### **Attachments**

Survey  
Location map  
Resolution  
Pictures  
Application

B 11-0810



Zoning Approved *[Signature]*

NOTES:

1. NO TITLE REPORT FURNISHED.

2. THIS PROPERTY IS IN ZONE "X" (AREA OF MINIMAL FLOODING), AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, COMMUNITY PANEL NO. 510201 0045 C, EFFECTIVE DATE SEPTEMBER 28, 2007.

3. BUILDING SETBACK:

FRONT: 25'  
REAR: 35'  
SIDE: 10'

4. ZONING: R2- GENERAL RESIDENTIAL.



FINAL 6/18/2011



1101 PROFESSIONAL DRIVE, SUITE B  
WILLIAMSBURG, VIRGINIA 23185  
(757) 345-2866 - (757) 345-2877 (FAX)

PHYSICAL IMPROVEMENT SURVEY

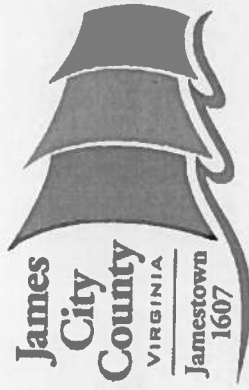
LOT 54  
SECTION FOUR  
FENWICK HILLS

INSTU.# 100007851  
STONEHOUSE DISTRICT  
JAMES CITY COUNTY, VIRGINIA

Date	5/2/2011
Scale	1" = 30'
Cad File Name	10-001-FINAL
Project Number	10-001

ZA-0003-2012

3492 Frederick Drive



R E S O L U T I O N   Z A - 0 0 0 3 - 2 0 1 2

GRANTING A VARIANCE ON JCC RE TAX PARCEL NO. (12-2) (06-0-0054)

**WHEREAS**, Luis Maldonado, property owner has appeared before the Board of Zoning Appeals of James City County (the "Board") on February 7, 2013 to request a variance on a parcel of property identified as JCC RE Tax Parcel No. (12-2) (06-0-0054) and further identified as 3492 Frederick Drive (the "Property") as set forth in the application ZA-0003-2012; and

**WHEREAS**, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record and discussed a motion to grant a variance to Section 24-258(b), Yard requirements, of the Code of James City County to reduce the required rear yard setback from 35' to 20' 6". This proposed variance request is to allow the continued placement of a deck that encroaches approximately 14' 6" into the rear yard setback as shown on the plat entitled "Physical improvement survey lot 54 section four Fenwick Hills and dated June 18, 2011 which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-2, General Residential and can further be identified as JCC RE Tax Map No. 1220600054.

**NOW THEREFORE**, the Board of Zoning Appeals of James City County by a majority vote of its members FINDS that:

1. The strict application of Chapter 24 of the Code of James City County (the "County Code") would produce undue hardship.
2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. Authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
4. By reason of the exceptional narrowness, shallowness, size or shape of the Property, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the Property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of Chapter 24 of the Code of James City County (the "County Code") would effectively prohibit or unreasonably restrict the utilization of the property.
5. Granting the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant.
6. The variance will be in harmony with the intended spirit and purpose of Chapter 24 of the County Code.
7. The condition or situation of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

**WHEREUPON, THE BOARD OF ZONING APPEALS OF JAMES CITY COUNTY ADOPTS THE FOLLOWING RESOLUTION:**

To Grant of a variance to section 24-258(b), Yard Regulations, of the James City County Zoning Ordinance reducing the required 35' rear yard setback to 20' 6". This variance is to allow the continued placement of a deck that encroaches approximately 14' 6" into the rear yard setback with no further encroachment as shown on the plat entitled "Physical improvement survey lot 54 section four Fenwick Hills and dated June 18, 2011 which

is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-2, General Residential and can further be identified as JCC RE Tax Map No. 1220600054.

Chair, Board of Zoning Appeals  
February 7, 2013

ATTEST:

Secretary

	Votes		
	Aye	Nay	Abstain
Rhodes	_____	_____	_____
Otey	_____	_____	_____
Rodgers	_____	_____	_____
Campana	_____	_____	_____

File:  
ZA-0003-2012  
1220600054

3492 Frederick Drive

ZA-0003-2012









## Board of Zoning Appeals Application

Date: 5/18/12 ZA: 03-12 Receipt No.: 6136

Please complete all sections of the application. Call 757-253-6671 if you have any questions, or go online to [jamescitycountyva.gov/zoning/board-zoning-appeals-procedures](http://jamescitycountyva.gov/zoning/board-zoning-appeals-procedures)

Please note that before accepting this application, County staff will verify that all real estate taxes owed for the subject properties have been paid in full in accordance with Section 24-24. If you are unsure if your payments are up-to-date, please contact the County Treasurer at 757-253-6705.

The applicant must provide the following information to support this application:

1. A plat of the property drawn to scale showing dimensions and locations of all structures, wells, septic systems and easements associated with the property.
2. A location sketch of the property showing all adjacent roads or right-of-ways and showing the nearest road intersection.
3. Building elevation drawings and/or topographical map if appropriate to request.

### 1. Project Information

Project Name: 3492 Frederick Drive Deck

Address: 3492 Frederick Drive \_\_\_\_\_ Zoning: R-2  
\_\_\_\_\_ Is site in PSA? Yes ☒ No \_\_\_\_\_

Tax map and parcel ID: 12-2-06-0-0054 \_\_\_\_\_

### 2. Applicant/Contact Information

Name: Luis Maldonado  
Company: \_\_\_\_\_ Phone: 757-544-3226 \_\_\_\_\_

Address: 3492 Frederick Drive Fax: \_\_\_\_\_  
Torano, VA 23168-7361 Email: \_\_\_\_\_

### 3. Property Owner Information

Name: Same as Applicant \_\_\_\_\_

Company: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Fax: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

PLANNING DIVISION

MAY 18 2012

RECEIVED

Zoning Enforcement Division  
P: 757-253-6671  
[zoning@jamescitycountyva.gov](mailto:zoning@jamescitycountyva.gov)

101-A Mounts Bay Road, P.O. Box 8784  
F: 757-253-6822

Williamsburg, VA 23185  
[jamescitycountyva.gov](http://jamescitycountyva.gov)



4. Variance

The above applicant respectively requests that the Board of Zoning Appeals grant a variance to Section 24 – 258 (b)\_\_\_ of the Zoning Ordinance.

The specific variance(s) requested are: Reduce the rear yard setback from the require 35 feet to 21 feet to allow the continued placement of the existing deck

Continue on separate page if necessary

The variance is requested for the following reasons: The existing lot is so shallow that there is not enough room for a deck. Adjacent properties do not share this same hardship, they have enough room to have a deck.

Continue on separate page if necessary

5. Appeal

The above applicant respectively requests that the Board of Zoning Appeals review the decision made on \_\_\_\_\_ date.

The following action is requested:

\_\_\_\_\_ an interpretation of Section 24- \_\_\_\_\_ of the Zoning Ordinance

\_\_\_\_\_ an interpretation of the Zoning Ordinance map

\_\_\_\_\_ an appeal of an administrative decision

Explanation of appeal: \_\_\_\_\_

Has the applicant previously filed an appeal in connection with the property? (If yes, give the date of appeal.) \_\_\_\_\_

Explanation of purpose to which property will be put: \_\_\_\_\_

*The undersigned declares that the above statements and those contained in any exhibits transmitted to the Board of Zoning Appeals are true.*

Applicant Signature: \_\_\_\_\_ Date: 05/18/12

Property Owner Signature: \_\_\_\_\_ Date: 05/18/12

BZA\_APP

Rev 04\_12